

7/14/08
(18)

LOCAL INITIATIVE PROGRAM

**REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
FOR
RENTAL PROJECT**

1622

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this _____ day of _____, 2008 by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD") pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the City/Town of Acton, a Massachusetts municipal corporation having an address of 472 Main Street, Acton, MA 01720 ("the Municipality"), and Acton Housing Authority, a Massachusetts public housing authority created in accordance with c.121B§5], having an address at 68 Windsor Ave., P.O. Box 681, Acton, MA 01720, and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 56.00 (the "Regulations") which establish the Local Initiative Program ("LIP") ;

WHEREAS, the Project Sponsor has acquired a condominium unit located at 10-16 Wampus Ave., Acton, MA, Unit 1622 Somerset Hills Condominium as rental housing in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of a total number of one rental dwelling (the "Unit") that will be rented at rents specified in this Agreement to Eligible Tenants as specified in paragraph two of this Agreement (the "Low and Moderate Income Units");

WHEREAS, the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Project Sponsor have made application to DHCD to certify that the units in the Project are Local Action Units (as that term is defined in the Comprehensive Permit Guidelines (the Guidelines) published by DHCD, with the LIP Program;; and

WHEREAS, in partial consideration of the execution of this Agreement, DHCD has issued or will issue its final approval of the Project within the LIP Program and has given and will give technical and other assistance to the Project;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Project Sponsor hereby agree and covenant as follows:

1. The Project Sponsor agrees to acquire the Project units as identified to and approved by the Municipality and DHCD. In addition, all Low and Moderate Income Units to be part of the Project must be indistinguishable from other Units in the Project from the exterior (unless the Project has an approved "Alternative Development Plan" as set forth in Comprehensive Permit Guidelines "the Guidelines") published by DHCD), and must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications.

_____ 1 _____ of the Low and Moderate Income Units shall be one bedroom units;
_____ of the Low and Moderate Income Units shall be two bedroom units;
_____ of the Low and Moderate Income Units shall be three bedroom units; and,
_____ of the Low and Moderate Income Units shall be four bedroom units.

. During the term of this Agreement, the Project Sponsor covenants, agrees, and warrants that the Project and each Low and Moderate Income Unit will remain suitable for occupancy and in compliance with all federal, state, and local health, safety, building, sanitary, environmental, and other laws, codes, rules, and regulations, including without limitation laws relating to the operation of adaptable and accessible housing for the handicapped.

2. (a) Throughout the term of this Agreement, each Low and Moderate Income Unit will be rented for no more than the rental rates set forth herein to an Eligible Tenant. An Eligible Tenant is a Family whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U.S. Department of Housing and Urban Development ("HUD") and whose assets do not exceed the limits specified in the Guidelines. A "Family" shall mean two or more persons who will live regularly in the Low and Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The "Area" is defined as the Boston **Cambridge-Quincy MA-NH MSA/HMFA/Non-Metropolitan County**.

(b) The monthly rents charged to tenants of Low and Moderate Income Units shall not exceed an amount equal to thirty percent (30%) of the monthly adjusted income of a Family whose gross income equals eighty percent (80%) of the median income for the Area, with adjustment for the number of bedrooms in the Unit, as provided by HUD. In determining the maximum monthly rent that may be charged for a Low and Moderate Income Unit under this clause, the Project Sponsor shall include an allowance for any utilities and services (excluding telephone) to be paid by the resident. Adjusted income shall be as defined in 24 C.F.R. 5.609 (or any successor regulation) using assumptions provided by HUD. The initial maximum monthly rents and utility allowances for the Low and Moderate Income Units are set forth in Exhibit B attached hereto.

Annually as part of the annual report required under Subsection 2(c) below, the Project Sponsor shall submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Low and Moderate Income Units in the Project. Such schedule shall be subject to the approval of the Municipality and DHCD for compliance with the requirements of this Section. Rents for Low and Moderate Income Units shall not be increased without the Municipality's and DHCD's prior approval of either (i) a specific request by Project Sponsor for a rent increase or (ii) the next annual schedule of rents and allowances.

Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by Project Sponsor to all affected tenants.

(c) Throughout the term of this Agreement, the Project Sponsor shall annually determine whether the tenant of each Low and Moderate Income Unit remains an Eligible Tenant. This determination shall be reviewed by the Municipality and certified to DHCD as provided in section 2(e), below. Any Low and Moderate Income Unit occupied by an Eligible Tenant at the commencement of occupancy shall be deemed a Low and Moderate Income Unit so long as (i) such unit continues to be rent restricted and (ii) the tenant's income does not exceed 140% of the Maximum Income. If the tenant's income exceeds 140% of the Maximum Income at the time of annual eligibility determination, his/her unit shall be deemed a Low and Moderate Income Unit until the next available unit with the same or greater number of bedrooms which is not a Low and Moderate Income Unit is rented to an Eligible Tenant.

(d) The Project Sponsor shall enter into a written lease with each tenant of a Low and Moderate Income Unit which shall be for a minimum period of one year and which provides that the tenant shall not be evicted for any reason other than a substantial breach of a material provision of such lease.

(e) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be Low and Moderate Income Unit as provided in section 2(c), above; and that the Project and the Low and Moderate Income Units have been maintained in a manner consistent with the Regulations and Guidelines and this Agreement.

3. Upon the occurrence of one of the events described in 760 C.M.R. 56.03, the Project will be included in the Subsidized Housing Inventory as that term is described in 760 C.M.R. 56.01.

4. All of the Units in the Project will be deemed low and moderate income housing and continue to be included in the Subsidized Housing Inventory in accordance with 760 CMR 56.01 for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Project Sponsor are in default hereunder; (2) the Project and each of the Low and Moderate Income Units continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) each Low and Moderate Income Unit remains a Low and Moderate Income Unit as provided in section 2(c), above.

5. **Intentionally deleted**

6. **Intentionally deleted**

7. (a) Prior to marketing or otherwise making available for rental any of the Units, the Project Sponsor must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Low and Moderate Income Units. Such Marketing Plan must describe the tenant selection process for the Low and Moderate Income Units and must set forth a plan for affirmative fair marketing of Low and Moderate Income Units and effective outreach to protected groups underrepresented in the municipality, consistent with the Regulations and Guidelines. At the option of the Municipality, and provided that the Marketing Plan demonstrates (i) the need for the local preference (e.g. a disproportionately low rental or ownership affordable housing stock relative to the need in comparison to the regional area) and (ii) that the proposed local preference will not have a disparate impact on protected classes, the Marketing Plan may also include a preference for local residents for up to seventy percent (70%) of the Low and Moderate Income Units, subject to all provisions of the Regulations and Guidelines. When submitted to DHCD for approval, the Marketing Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant selection and local preference (if any) aspects of the Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp. **If the Project is located in the Boston-Cambridge-Quincy MA-NH Metropolitan Statistical Area, the Project Sponsor must list all Low and Moderate Income Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center); other requirements for listing of units are specified in the Guidelines .All costs of carrying out the marketing Plan shall be paid by the Project Sponsor.**

(b) The Project Sponsor may use in-house staff to draft and/or implement the Marketing Plan, provided that such staff meets the qualification described in the Guidelines. The Project Sponsor may contract for such services provided that any such contractor must be experienced and qualified under the standards set forth in the Guidelines. A failure to comply with the Marketing Plan by the Project Sponsor or by the Municipality shall be deemed to be a default of this Agreement. The Project Sponsor agrees to maintain for five years following the initial rental of the last Low and Moderate Income Unit and for five years following all future rentals, a record of all newspaper advertisements, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Project Sponsor or the Municipality. The Project Sponsor and the Municipality agree that if at any time prior to or during the process of marketing the Low and Moderate Income Units, DHCD determines that the Project Sponsor, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Project Sponsor or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

8. Neither the Project Sponsor nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin, religion, sexual orientation, familial status, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of tenants; and the Project Sponsor shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

9. The Project Sponsor agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Project Sponsor and the Project in order to monitor the Project Sponsor's compliance with the terms of this Agreement.

10. Upon execution, the Project Sponsor shall immediately cause this Agreement and any amendments hereto to be recorded with the Registry of Deeds for the County where the Project is located or, if the Project consists in whole or in part of registered land, file this Agreement and any amendments hereto with the Registry District of the Land Court for the County where the Project is located (collectively hereinafter the "Registry of Deeds"), and the Project Sponsor shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Project Sponsor shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

11. The Project Sponsor hereby represents, covenants and warrants as follows:

- (a) The Project Sponsor (i) is a public body politic and corporate duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by the Project Sponsor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Project Sponsor is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Project Sponsor will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, any encumbrances of record associated with the Condominium, or other permitted encumbrances, including mortgages referred to in paragraph 19, below).
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Sponsor, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

12. Except for rental of Units to Eligible Tenants as permitted by the terms of this Agreement, the Project Sponsor will not sell, transfer, lease, exchange, or mortgage the Project without the prior written consent of DHCD and the Municipality.

13. (a) The Project Sponsor represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Sponsor (subject to the approval of the lender(s) which has provided financing) will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with this Agreement.

(b) The Project Sponsor shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental Unit for any purpose other than rental housing during the term of the Agreement unless required by law.

14. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

15. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

DHCD:

Department of Housing and Community Development
Attention: Local Initiative Program Director
100 Cambridge Street, 3rd Floor
Boston, MA 02114

Municipality: Town of Acton

Attention: Town Manager
472 Main Street
Acton, MA 01720

Project Sponsor: Acton Housing Authority

Attention: Executive Director
68 Windsor Street, P.O. Box 681
Acton, MA 01720

16. (a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. This Agreement is made for the benefit of DHCD and the Municipality, and DHCD and the Municipality shall be deemed to be the holders of the affordable housing restriction created by this Agreement. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement, the rental restrictions, and other requirements provided herein shall be perpetual.

(b) The Project Sponsor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Project Sponsor's successors in title, (ii) are not merely personal covenants of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns and enure to the benefit of DHCD and the Municipality and their successors and assigns for the term of the Agreement. Project Sponsor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

17. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement. In the event of serious or repeated violations of the substantive or reporting requirements of this Agreement or a failure by the Project Sponsor to take appropriate actions to cure a default under this Agreement, the Municipality and DHCD shall have the right to take appropriate enforcement action against the Project Sponsor, including, without limitation, legal action to compel the Project Sponsor to comply with the requirements of this Agreement. The Project Sponsor shall pay the fees and expenses (including legal fees) of the Municipality and/or DHCD in the event enforcement action is taken against the Project Sponsor under this Agreement and grants to the Municipality and DHCD a lien on the Project, junior to the lien securing a first mortgage to an institutional lender, to secure payment of such fees and expenses.

18. (a) The Project Sponsor and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Project Sponsor or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Project Sponsor or the Municipality hereunder without receiving a Default Notice from Project Sponsor or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD

within thirty (30) days after the giving of the Default notice by the Project Sponsor or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 18, then the Low and Moderate Income Units and any other Units at the Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed low and moderate income housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory. Further, if DHCD elects to terminate this Agreement, the Project Sponsor shall enter into a new regulatory agreement in substantially the same form as this Agreement (modified so as to eliminate DHCD as a party).

A termination of this Agreement by DHCD as provided under this Section 18 shall not occur until either (a) the Municipality and the Project Sponsor has entered into a new agreement as provided herein; or (b) the Municipality has notified DHCD in writing that it elects not to enter into a new agreement with the Project Sponsor.

(c) The Project Sponsor acknowledges that the primary purpose for requiring compliance by the Project Sponsor with the restrictions provided herein is to create and maintain long-term affordable rental housing, and by reason thereof the Project Sponsor agrees that DHCD or the Municipality or any prospective, present, or former tenant shall be entitled for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce the specific performance by the Project Sponsor of its obligations under this Agreement in a state court of competent jurisdiction. The Project Sponsor further specifically acknowledges that the beneficiaries of its obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. In the event of a breach of this Agreement, the Project Sponsor shall reimburse DHCD and the Municipality for all costs and attorney's fees associated with such breach.

19. The Project Sponsor represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed the Consent to Regulatory Agreement attached hereto and made a part hereof.

Executed as a sealed instrument as of the date first above written.

Project Sponsor
Acton Housing Authority

By: _____

its _____

Department of Housing and
Community Development

By: _____

its _____

Municipality
Town of Acton

By: _____

its _____
(Chief Executive Officer)

Attachments: Exhibit A - Legal Property Description
Exhibit B - Rents for Low and Moderate Income Units

LSlip\l-ra-r.

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 200_

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ of the _____ [Project Sponsor], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss. _____, 200_

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 200_

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the City/Town of _____, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

[DCH - if there is no lender, this should be deleted]

COMMONWEALTH OF MASSACHUSETTS

EXHIBIT A

Re: Scattered-site units- Acton Housing Authority
(Project name)
Acton, MA
(City/Town)
Acton Housing Authority
(Project Sponsor)

Property Description

Exhibit A
(Legal Description)

Description: Unit 1622 (the "Unit") of the SOMERSET HILLS CONDOMINIUM in Acton, Middlesex County, Massachusetts, created by a Master Deed dated December 7, 2005 and registered with the Middlesex South District Registry of the Land Court in Book 33, Page 45, as Document No. 1404969, and subsequently withdrawn from registration pursuant to the Notice of Voluntary Withdrawal of the Land from the Registration System approved by the Land Court on February 17, 2006 and recorded with the Middlesex South District Registry of Deeds (the "Registry") in Book 47103, Page 573, as amended by that certain First Amendment to Master Deed dated October 25, 2006 and recorded with the Registry in Book 48381, Page 429, that certain Second Amendment to Master Deed dated February 2, 2007 and recorded with the Registry in Book 48947, Page 314, and that certain Third Amendment to Master Deed dated April 25, 2007 and recorded with the Registry in Book 49355, Page 114, and that certain Fourth Amendment to Master Deed dated August 30, 2007 and recorded with the Registry in Book 50085, Page 197, as it may be further amended from time to time by instruments duly recorded (the "Master Deed"), together with an undivided 2.0% interest appertaining to the Unit in the common areas and facilities of Somerset Hills Condominium (the "Condominium").

EXHIBIT B

Re: 1622 Somerset Hills
10-16 Wampus Avenue, Unit 22
Acton, MA 01720
Acton Housing Authority

Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units

	<u>Rents</u>	<u>Utility Allowances</u>
Studio units	\$ _____	\$ _____
One bedroom units	\$ 975 _____	\$ 165 _____
Two bedroom units	\$ _____	\$ _____
Three bedroom units	\$ _____	\$ _____
Four bedroom units	\$ _____	\$ _____